

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:13-CT-3102-FL

TROY GRANT DUNCAN,

Plaintiff,

v.

PENNY MANSFIELD, DR. CHANSON
DEVAUL, PETER WOGLOM, and
RAND CARTWRIGHT,

Defendants.

ORDER

The matter is before the court for frivolity review pursuant to 28 U.S.C. § 1915. Also before the court is plaintiff's unopposed motion for a subpoena (DE 5). In this posture, the issues raised are ripe for adjudication.

The court begins with its frivolity review of plaintiff's action filed pursuant to 42 U.S.C. § 1983. Section 1915 provides that courts shall review complaints in which prisoners seek relief from a governmental entity or officer, and dismiss such complaints when they are "frivolous." 28 U.S.C. § 1915(e)(2)(B)(i). It does not clearly appear from the face of the complaint that plaintiff is not entitled to relief, thus the matter is allowed to proceed.

The court now turns to plaintiff requests that the court issue a subpoena directing the Albemarle District Jail to produce his medical records. The Federal Rules of Civil Procedure enable parties to obtain information by serving requests for discovery, including the issuance of subpoenas. See generally, Fed.R.Civ.P. 26-37, 45. Rule 34 authorizes a party to issue subpoenas to non-parties.

Fed.R.Civ.P. 34(c) (“As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.”) Rule 45 outlines the procedure for issuing subpoenas. Fed.R.Civ.P. 45; see also, In re Rule 45 Subpoena to Robert Kochan, No. 5:07-MC-44-BR, 2007 WL 4208555, at *4 (E.D.N.C. Nov. 26, 2007) (“Rule 45 expressly permits a party to issue discovery subpoenas to a nonparty for documents and things in the nonparty’s possession, custody, or control.”) (citing Fed.R.Civ.P. 45(a)(1)(C)). “Rule 45 adopts the standard codified in Rule 26” in determining what is discoverable. Schaff v. SmithKline Beecham Corp., 233 F.R.D. 451, 453 (E.D.N.C. 2005). Here, there is no indication that plaintiff utilized the Federal Rules of Civil Procedure to obtain the discovery he seeks. Accordingly, his motion for a subpoena is DENIED.

In summary, plaintiff is ALLOWED to proceed with his claim. Plaintiff’s motion for a subpoena (DE 5) is DENIED. Given the fact that the court has allowed plaintiff to proceed with this action, motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted are discouraged.

SO ORDERED, this the 10th day of October, 2013.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is fluid and cursive, with the first name "Louise" being the most prominent part.

LOUISE W. FLANAGAN
United States District Judge